TAN NYOK CHIN v. PEMUNGUT DUTI SETEM

HIGH COURT MALAYA, SHAH ALAM
ROZI BAINON JC
[ORIGINATING SUMMONS NO: BA-24NCvC-1560-08-2023]
19 MAY 2024

Abstract – *A deed of settlement and renunciation of inheritance as the instrument used to release the children's entitlement and rights to the property to their mother, is charged with a nominal duty as it has no legal effect of transferring the property to the mother. However, Form 14A, the instrument that executes the transfer, is charged with ad valorem duty, as it has the legal effect of transferring the title to the mother. For the latter instrument, the adjudication of stamp duty must be referred to items 32(i) and 66(c), First Schedule of Stamp Duty Act 1949.*

REVENUE LAW: *Stamp duty – Ad valorem stamp duty – Duty chargeable on instrument of transfer – Deceased died intestate – Land distributed to wife and children of deceased – Children of deceased agreed to renounce all rights and entitlements to land to wife of deceased via Deed of Settlement and Renunciation of Inheritance – Execution of Form 14A – Whether adjudication of stamp duty must be referred to Item 32(i) and 66(c), First Schedule of Stamp Act 1949 – Whether ad valorem duty charged correct in law*

LAND LAW: *Transfer – Instruments – Stamp duty – Deceased died intestate – Land distributed to wife and children of deceased – Children of deceased agreed to renounce all rights and entitlements to land to wife of deceased via deed of settlement and renunciation of inheritance – Execution of Form 14A – Imposition of ad valorem stamp duty – Whether adjudication of stamp duty must be referred to items 32(i) and 66(c), First Schedule of Stamp Act 1949 – Whether ad valorem duty charged correct in law*

The deceased died intestate and was survived by his wife ('plaintiff') and five children. The plaintiff was appointed as the administratrix of the estate. A piece of land ('land') was distributed to the plaintiff and five children. By way of the deed of settlement and renunciation of inheritance, the five children agreed to renounce all their rights and entitlements to the land to their mother *ie*, the plaintiff. Therefore, a vesting order was issued to the plaintiff and a leave was granted for the plaintiff to execute Form 14A and any other related documents to effect the vesting of the title of the land. The plaintiff submitted Form 14A to the defendant for adjudication. Pursuant to s. 36 of the Stamp Act 1949 ('Stamp Act'), a notice of assessment was issued to the plaintiff and stamp duty was imposed as follows (i) RM10 as fixed stamp duty on the 1/6 share of the land which was vested to the plaintiff; and (ii) RM20,800

as *ad valorem* stamp duty on the 5/6 share of the land which was vested to the plaintiff. The plaintiff paid all the stamp duty but she paid the *ad valorem* stamp duty under protest. The plaintiff submitted the notice of objection to the defendant, which was dismissed. The plaintiff, aggrieved with the decision of the defendant for imposing the duty *ad valorem* in the sum of RM20,800 to the plaintiff, appealed to the High Court. The plaintiff raised one sole question to be determined by this court, namely: whether the Form 14A, which gave effect to the renunciation by beneficiaries under a will to another beneficiary (plaintiff) shall be (i) construed as a 'gift' and subject to *ad valorem* stamp duty under items 66(c) read with item 32(a), First Schedule of the Stamp Act; or (ii) subject to fixed stamp duty under item 32(i), First Schedule of the Stamp Act.

Held (dismissing plaintiff's application):

(1) The property of the deceased had already been administered in this case, and as such, all the beneficiaries, *ie*, the plaintiff and the five children already have the beneficial interest in the deceased's property. Therefore, the deed of settlement and renunciation of inheritance was made with the intention to renounce the children's beneficial interests in the land and give it to the plaintiff/their mother. This renunciation was a distribution of the deceased's estate by the children who were beneficiaries before and gave it to the mother/plaintiff as the sole beneficiary based on the deed of settlement and renunciation of inheritance. (para 38)

(2) In applying the case of *Pemungut Duti Setem Malaysia v. Perbadanan Pembangunan Pulau Pinang*, and after scrutinising the facts, the *ad valorem* duty imposed by the defendant to the plaintiff was correctly made, because (i) the plaintiff who was also the administrator and one of the beneficiaries did not transfer the estate of her late husband according to the will. The defendant would impose an *ad valorem* duty under item 66 of First Schedule of the Stamp Act; (ii) the deed of settlement and renunciation of inheritance was not just an approval instrument that passed the rights/interests/entitlements of the five children to their mother (plaintiff) and to skip the payment of the stamp duty to be levied under the Stamp Act; (iii) the deed of settlement and renunciation of inheritance as the instrument used to release the children's entitlement and rights of the property to the mother/plaintiff, this instrument has been charged with a nominal duty of RM10, as it had no legal effect of transferring the property to the mother/plaintiff. However, Form 14A, the instrument that executed the transfer, was charged with *ad valorem* duty as it had the legal effect of transferring the title to the plaintiff (mother); (iv) a specific item in the Stamp Act caters to the renunciation *ie*, item 66 of First Schedule, the transfer of 5/6 of the property to the mother/plaintiff must be charged according to item 66(c) of First

Schedule of the Stamp Act; and (v) Form 14A is a document/an instrument that is able to transfer title, therefore, the adjudication of stamp duty must be referred to items 32(i) and 66(c), First Schedule of the Stamp Act. (para 61)

(3) The *ad valorem* duty charged was, therefore, correct in law and fact, and the defendant was right in dismissing the plaintiff's objection as regards the duty charged. The assessment of the defendant was not erroneous; therefore, there was no question of any excess of duty. (para 62)

Case(s) referred to:

Ch'ng Cheng Siew v. Pemungut Duti Setem [2016] 1 CLJ 724 HC ***(refd)***

Chua Wee Hee v. Pemungut Duti Setem & Anor (Appeal No: JB-16A-1-04-2018) (Unreported) ***(refd)***

Commissioner Of Stamp Duties (Queensland) v. Livingston [1964] 3 All ER 692 ***(refd)***

Hor Lim Chee v. Pemungut Duti Setem (Originating Summon No: 24NCvC-1347-12-2013) (Unreported) ***(refd)***

Kwan Teck Meng & Ors v. Liew Sam Lee [1962] CLJU 73; [1962] 1 LNS 73 HC ***(refd)***

Lai Siew Yoong v. Pemungut Duti Setem [2020] CLJU 1407; [2020] 1 LNS 1407 HC ***(refd)***

Ngan & Ngan Holdings Sdn Bhd & Anor v. Central Mercantile Corporation (M) Sdn Bhd [2010] 3 CLJ 818 CA ***(refd)***

Nolan v. Nolan & Anor [2003] VSC 121 ***(refd)***

Pemungut Duti Setem v. Lee Koy Eng [2022] 3 CLJ 252 CA ***(refd)***

Pemungut Duti Setem Malaysia v. Perbadanan Pembangunan Pulau Pinang [2024] CLJU 982; [2024] 1 LNS 982 CA ***(refd)***

Re Tan Soh Sim, Deceased; Chan Lam Keong & Ors v. Tan Saw Keow And & Ors [1951] CLJU 77; [1951] 1 LNS 77 HC ***(refd)***

Sabah Berjaya Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri [1999] 3 CLJ 587 CA ***(refd)***

Queck Poh Guan v. Quick Awang [1998] CLJU 159; [1998] 1 LNS 159 HC ***(refd)***

Legislation referred to:

Stamp Act 1949, ss. 4(1), (4), 16(1), 36, 39, First Schedule, items 32(a), (b), (c), (d), (e), (f), (g), (h), 46, 66(c)

For the applicant - Chew Jin Heng; M/s Halim Hong & Quek
For the respondant - Nur Aina Mohd Jaffar; SRC & Intan Natasha Yusri; RC

Reported by Suhainah Wahiduddin

JUDGMENT

Rozi Bainon JC:

Introduction

[1] The plaintiff is the widow of Yong An Yee @ Yong See Teck, who died testate on 7 November 2019. Yong An Yee @ Yong See Teck's last will and testament is dated 25 April 2008. Yong An Yee @ Yong See Teck is survived by wife (the plaintiff/Tan Nyok Chin) and five children (one son and four daughters).

[2] The administrator of the estate of Yong An Yee @ Yong See Teck is PB Trustee Services Berhad. On 8 May 2020, PB Trustee Services Berhad rejected to administer the estate of Yong An Yee @ Yong See Teck. On 16 June 2020, the Kuala Lumpur High Court has appointed the plaintiff as the administratrix of the estate *vide*, grant of letter of administration dated 16 June 2020.

[3] The land known as Geran Mukim 3644, No. Lot 577, Mukim Serendah, Daerah Hulu Selangor (is referred to as the "land") shall be distributed to Yong An Yee @ Yong See Teck's wife and five children as follows:

Plaintiff/Wife	Tan Nyok Chin	20%
Son	Yong Sam Kai	20%
Daughter	Yong Ya Jing	15%
Daughter	Yong Rui Pin	15%
Daughter	Yong Wei Ling	15%
Daughter	Yong Jie Shun	15%

[4] By way of the deed of settlement and renunciation of inheritance dated 27 March 2023, all the five children agreed to renounce all their rights and entitlements to the land to their mother *ie*, the plaintiff.

[5] Therefore, on 17 April 2023, *vide* an originating summons at Kuala Lumpur High Court, a vesting order was issued to the plaintiff and a leave was granted for the plaintiff to execute Form 14A and any other related documents to effect the vesting of the title of the land.

Notice Of Assessment Pursuant To Stamp Act 1949

[6] On 23 June 2023, the plaintiff submitted the Form 14A dated 22 June 2023 to the defendant (Pemungut Duti Setem) for adjudication.

[7] Pursuant to s. 36 of the Stamp Act 1949 (Act 378), a notice of assessment was issued to the plaintiff and imposed the stamp duty as follows:

(i) RM10 as fixed stamp duty on the 1/6 share of the land which is vested to the plaintiff; and

(ii) RM20,800 as *ad valorem* stamp duty on the 5/6 share of the land which is vested to the plaintiff.

[8] The plaintiff paid all the stamp duty as in paras. (i) and (ii). But for para. (ii), she paid under protest. The defendant issued the stamp certificate dated 26 July 2023 to the plaintiff.

[9] On 27 July 2023, the plaintiff submitted the notice of objection to the defendant.

[10] On 2 August 2023, the defendant dismissed/rejected the plaintiff's notice of objection.

[11] The plaintiff is dissatisfied with the defendant's decision and filed an appeal to the High Court pursuant to s. 39 of the Act 378.

The Originating Summons

[12] By way of originating summons (OS), the plaintiff seeks the following orders and/or reliefs:

(a) deklarasi bahawa notis taksiran bertarikh 13.7.2023 yang mengenakan duti setem sebanyak RM20,800.00 di bahagian "PENGIRAAN DUTI YANG DIKENAKAN (DUTI *AD VALOREM*)" di bawah Butiran 32, Jadual Pertama, Akta Setem 1949, atas Pindahmilik Tanah (Borang 14A) bertarikh 22.6.2023 berkenaan dengan 5/6 bahagian bagi Hakmilik GM 3644, No. Lot 577, Mukim Serendah, Daerah Hulu Selangor, Negeri Selangor ("Tanah"), adalah salah dan diketepikan;

(b) deklarasi bahawa Pindahmilik Tanah (Borang 14A) bertarikh 22.6.2023 berkenaan dengan 5/6 bahagian bagi Tanah tersebut ("Borang 14A") dikenakan duti setem tetap sebanyak RM10.00 sahaja di bawah Butiran 32(i), Jadual Pertama, Akta Setem 1949;

(c) duti setem *ad valorem* sebanyak RM20,800.00 yang telah terlebih dibayar atas Borang 14A dikembalikan/dibayar balik oleh Defendan kepada Plaintif;

(d) faedah terhadap duti setem sebanyak RM20,800.00 tersebut pada kadar 5% setahun yang dikira daripada tarikh penghakiman sehingga tarikh penyelesaian penuh;

(e) kos; dan

(f) relief selanjutnya dan/atau relief lain sebagaimana Mahkamah yang Mulia ini fikirkan suai manfaat.

Affidavit In Support

[13] To support its OS, the plaintiff has stated:

(a) Defendan tidak dan gagal memberi sebarang alasan kepada Plantif mengenai keputusannya di dalam format notis taksiran bertarikh 13.7.2023 yang dikeluarkan oleh Defendan ("Notis Taksiran") yang mengenakan duti setem *ad valorem* sebanyak RM20,800.00 ke atas 5/6 bahagian bagi Tanah tersebut;

(b) Defendan turut gagal memberitahu Plaintif bahawa pengenaan duti setem *ad valorem* sebanyak RM20,800.00 dalam Notis Taksiran tersebut ke atas 5/6 bahagian bagi Tanah tersebut adalah di bawah sub-butiran yang mana menuruti Butiran 32, Jadual Pertama, Akta Setem 1949;

A (c) Defendan tidak dan gagal memberi sebarang alasan kepada Plantif mengenai keputusan penolakannya yang disampaikan kepada Plaintif pada 2.8.2023 melalui portal STAMPS terhadap Notis Bantahan yang difailkan oleh Plaintif melalui portal STAMPS pada 27.7.2023;

B (d) Defendan terkhilaf dari segi undang-undang dan fakta dan gagal mengambil kira bahawa Plaintif merupakan seorang Pentadbir yang dilantik oleh Mahkamah yang Mulia ini mengikuti Surat Kuasa Mentadbir Dengan Wasiat (Saman Pemula No. WA-31NCvC-594-05/2020) yang dikeluarkan oleh Mahkamah yang Mulia ini pada 16.6.2020;

C (e) Defendan terkhilaf dari segi undang-undang dan fakta dan gagal mengambil kira bahawa Plaintif dan kesemua anak kepada Yong An Yee@Yong Soo Teck (No. K/P: 430527-10-5299), Si Mati ("Si Mati") (iaitu Yong Sam Kai, Yong Ya Jing, Yong Rui Pin, Yong Wei Ling dan Yong Jie Shun) yang merupakan benefisiari-benefisiari kepada harta pusaka Si Mati ("Kesemua Anak") di bawah D wasiat Si Mati, telah memasuki dan melaksanakan suatu Perjanjian Penyelesaian dan Pelepasan Harta Pusaka (Deed of Settlement And Renunciation of Inheritance) pada 27.3.2023 di mana kesemua Anak telah melepaskan hak-hak mereka masing-masing di bawah wasiat Si Mati ("Pelepasan Hak Mewarisi") untuk mewarisi 5/6 bahagian E terhadap Tanah tersebut. Berikutan Pelepasan Hak Mewarisi tersebut, Plaintif menjadi benefisiari tunggal untuk mewarisi 5/6 bahagian Tanah tersebut;

(f) Defendan gagal mengambil kira prinsip perundangan yang mantap di mana Kesemua Anak yang dinamakan sebagai benefisiari-benefisiari di bawah wasiat Si Mati adalah tidak diwajibkan di sisi F undang-undang untuk mewarisi 5/6 bahagian Tanah tersebut;

(g) Defendan gagal mengambil kira prinsip perundangan yang mantap di mana sekiranya kesemua Anak telah melepaskan hak mereka sebagai benefisiari-benefisiari, harta pusaka Si Mati haruslah diambil kira tidak pernah dimiliki oleh mereka; G

(h) Defendan gagal mengambil kira fakta bahawa suatu perintah perletakhak telah diberikan kepada Plaintif di mana Plaintif telah diberikan, antara lain, kebebasan dan kebenaran sebagai Pentadbir harta pustaka Si Mati untuk memindahmilik hartanah untuk kesemua bahagian bagi Tanah tersebut kepada Plaintif sebagai H tuanpunya melalui perintah Mahkamah yang Mulia ini dalam Saman Pemula No. WA-31NCvC-594-05/2020 pada 30.5.2023;

(i) Defendan terkhilaf dari segi undang-undang dan fakta di mana Defendan menganggap Pelepasan Hak Mewarisi sebagai suatu pindah milik tanah daripada Kesemua Anak kepada Plaintif melalui Borang 14A di bawah Butiran 32, Jadual Pertama, Akta Setem 1949; I

(j) Defendan gagal mengambil kira prinsip perundangan yang mantap di mana kesemua Anak tidak pernah mempunyai sebarang hak ke atas Tanah tersebut kerana pentadbiran harta pusaka Si Mati berkenaan dengan Tanah tersebut tidak disempurnakan oleh Plaintif pada setiap masa yang material;

(k) Defendan gagal mengambil kira prinsip perundangan yang mantap di mana 5/6 bahagian bagi Tanah tersebut diperletak kepada Plaintif menerusi penurunan kepentingan dengan kuatkuasa undang-undang (devolution of interest by operation of law) dan oleh yang demikian, pindahan 5/6 bahagian bagi Tanah tersebut tidak boleh dianggap sebagai suatu pindah milik tanah;

(l) Defendan gagal mengambil kira prinsip perundangan yang mantap di mana Borang 14A tersebut hanya dilaksanakan untuk memberi kesan kepada pelepasan hak-hak Kesemua Anak berikutan pelaksanaan Perjanjian Penyelesaian dan Pelepasan Harta Pusaka; dan

(m) bahawa alasan-alasan lanjut dan alasan-alasan lain rayuan boleh ditambah melalui pindaan apabila Defendan menyatakan dan menandatangani kes yang dikehendaki dibawah Seksyen 39(2) Akta Setem 1949 dan menyampaikan kepada Plaintif.

Affidavit In Reply

[14] The defendant in its affidavit in reply, stated that:

27. Defendan menyatakan bahawa Defendan telah secara betul dan teratur membangkitkan taksiran duti setem ke atas suratcara-suratcara pindahmilik haratanah tersebut kepada Plaintif berdasarkan kepada perkara yang berikut:

27.1 Si mati meninggal dunia dengan meninggalkan Wasiat dan Testamen yang terakhir bertarikh 25-4-2008 ('Wasiat tersebut');

27.2 Senarai benefisiari dan pembahagian kepentingan berdasarkan Wasiat tersebut adalah seperti berikut:

Bil.	Nama Benefisiari	Hubungan	Jumlah Agihan
1.	Tan Nyok Chin	Isteri yang Sah/Plaintif	20%
2.	Yong Sam Kai	Anak Lelaki yang Sah	20%
3.	Yong Ya Jing	Anak Perempuan yang Sah	15%
4.	Yong Rui Pin	Anak Perempuan yang Sah	15%
5.	Yong Wei Ling	Anak Perempuan yang Sah	15%
6.	Yong Jie Shun	Anak Perempuan yang Sah	15%

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27.3 Defendan mengatakan bahawa pengiraan dan taksiran duti setem bagi pindahmilik hartanah tersebut melibatkan kes Wasiat adalah dikenakan Duti Setem tetap berjumlah RM10.00 apabila pemindahan hartanah tersebut diserahkan/diturunmilik kepada benefisiari yang layak seperti yang tersenarai di dalam Wasiat tersebut.

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27.4 Sekiranya berlaku penolakan/pelepasan hak ("renunciation of interest") terhadap kepentingan hak yang diperoleh sebagai benefisiari ke atas hartanah si mati, maka pecahan bahagian hakmilik yang ditolak oleh benefisiari akan ditentukan mengikut peruntukan dalam Perintah Perletakhak (Vesting Order) bagi

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tujuan pengiraan duti setem dan dikenakan taksiran secara duti *ad valorem* ke atas pecahan bahagian hakmilik tersebut.

27.5 Berdasarkan Perintah Mahkamah bertarikh 30-5-2023 dan Perjanjian Penyelesaian dan Pelepasan Pewarisan bertarikh 27-3-2023 yang ditandatangani oleh benefisiari-benefisiari iaitu Plaintif

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dan kesemua 5 anak Plaintif yang setiap seorang memegang 1/6 bahagian dalam hartanah tersebut, kesemua anak Plaintif telah menolak kesemua hak mereka secara balasan kasih sayang kepada Plaintif dengan bersetuju melepaskan kesemua hartanah tersebut kepada Plaintif;

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27.6 Defendan mengatakan kesemua anak si mati tersebut dnegan jelas secara muafakat menolak segala hak, faedah (benefit)/ kepentingan benefisiari yang layak mereka peroleh ke atas bahagian hakmilik hartanah tersebut dan telah bersetuju secara sukarela untuk menyerahkan kesemua hakmilik bahagian hartanah tersebut hanya kepada Plaintif (ibu mereka);

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27.7 Defendan seterusnya mengatakan bahawa Plaintif dengan jelas telah menyatakan persetujuan menerima kesemua 5/6 bahagian hakmilik hartanah tersebut diturunmilik/dipindahmilik kepadanya oleh kesemua anaknya melalui Perjanjian Penyelesan Dan Pelepasan Pewarisan tersebut apabila Plaintif sendiri turut menandatangani Perjanjian Penyelesan Dan Pelepasan Pewarisan

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tersebut;

27.8 Oleh kerana berlakunya penolakan hak kepentingan oleh kesemua anak si mati yang melibatkan pecahan 5/6 bahagian anak-anak ke atas pindahmilik 1/6 bahagian hakmilik hartanah tersebut mengikut Wasiat tersebut, Defendan menegaskan bahawa

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pengiraan duti bagi pindahmilik Borang 14A ke atas pecahan 5/6 bahagian benefisiari tersebut adalah dikenakan duti *ad valorem* dan ditaksir mengikut Butiran 66(c) Jadual Pertama Akta Setem 1949 apabila mereka telah bersetuju secara sukarela memperakukan untuk melepaskan segala hak, faedah (benefit)/kepentingan masing-masing kepada benefisiari lain iaitu Tan Nyok Chin (ibu);

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dan

27.9 Baki pecahan 1/6 bahagian Plaintif mengiku wasiat tersebut adalah jelas tidak meibatkan apa-apa penolakan kepentingan hak ke atas pindahmilik 1/6 bahagian hakmilik hartanah tersebut adalah ditaksir dan dikenakan duti tetap berjumlah RM10.00.

28. Oleh yang demikian, Borang Pindahmilik ini merupakan instrumen untuk memberi kesan terhadap suatu pelepasan hak oleh waris-waris yang menerima wasiat kepada seorang lagi waris dan oleh itu adalah tertakluk kepada Butiran 66 Jadual Pertama Akta Setem 1949.

Questions/Issues Before This Court

[15] The plaintiff, who is dissatisfied with/objected to/aggrieved with the decision of the defendant (Pemungut Duti Setem) for imposing the duty *ad valorem* in the sum of RM20,800 to the plaintiff now appealed to the High Court. This case was registered as per the originating summons and not judicial review due to the decision of the defendant (Pemungut Duti Setem).

[16] The plaintiff raised one/sole question/issue to be determined by this court, namely:

Whether the Form 14A in the present case, which gives effect to the renunciation by beneficiaries under a will to another beneficiary (plaintiff) shall be:

(i) construed as a "gift" and subject to *ad valorem* stamp duty under Item 66(c) read with item 32(a), First Schedule of the Stamp Act 1949?

or

(ii) subject to fixed stamp duty under item 32(i), First Schedule of the Stamp Act 1949?

[17] The defendant raised the question/issue to be determined by this court, namely:

Sama ada Memorandum Pindahmilik (Borang 14A) tersebut yang memberi kesan kepada suatu pelepasan hak oleh waris-waris yang menerima Wasiat kepada seorang lagi waris penerima Wasiat:

Dianggap sebagai pemberian hadiah dan boleh dikenakan duti setem *ad valorem* di bawah Butiran 66(c) yang dibaca bersama Butiran 32(a), Jadual Pertama Akta Setem 1949?

Atau

Boleh dikenakan duti setem tetap di bawah Butiran 32(i), Jadual Pertama Akta Setem 1949?

A **The Plaintiff's Submission**

[18] Learned counsel for the plaintiff submits that the five out of six shares of the land vested to the plaintiff pursuant to the court order *vide* the vesting order and deed of settlement and renunciation of inheritance shall only be subject to a fixed stamp duty of RM10 pursuant to item 32(i), First Schedule
B of Act 378.

[19] The reasons for this contention are:

(i) the children of the late Yong An Yee @ Yong See Teck had renounced all their rights and entitlements to the land pursuant to the deed of
C settlement and renunciation of inheritance. They gave their proportion to their mother/the plaintiff. With that, the plaintiff shall be the sole beneficiary of the land.

(ii) the children of the late Yong An Yee @ Yong See Teck never had any right, title or interest on the land and they had no capacity and/or rights
D to "gift" their five out of six shares of the land to the plaintiff.

(iii) the transfer of the five out of six shares of the land was made pursuant to devolution of interest by operation of law.

(iv) Form 14A was filed solely to give effect to the instruments of the vesting
E order and the deed of settlement and renunciation of inheritance.

(v) therefore, Form 14A which effects the transfer of the five out of six shares of the land from the five children to the plaintiff cannot be construed as a "gift" under item 66(c) read together with item 32(a) of the First Schedule to Act 378.

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[20] Learned counsel for the plaintiff submits and refers to the following authorities:

(i) section 4(1), s. 16(1), item 32(a) and item 32(i), First Schedule, item 66(c), First Schedule of Act 378;

G (ii) Form 14A;

(iii) Court of Appeal's decision in the case of *Pemungut Duti Setem v. Lee Koy Eng* [2022] 3 CLJ 252; [2022] 2 MLJ 453 (paras. [10] and [42] to [44] and [64] and [65] of the decision);

H (iv) High Court's decision in the case of *Ch'ng Cheng Siew v. Pemungut Duti Setem* [2016] 1 CLJ 724; [2016] 7 MLJ 758 (paras. [23] and [24] of the decision); and

(v) Court of Appeal's decision in the case of *Ngan & Ngan Holdings Sdn Bhd & Anor v. Central Mercantile Corporation (M) Sdn Bhd* [2010] 3 CLJ 818;
I [2010] 1 MLJ 822 (para. [21] of the decision).

[21] In applying the principles and authorities cited, learned counsel for the plaintiff submits that Form 14A, which gives effect to the renunciation by the children to their mother, shall not be construed as a "gift" and the *ad valorem* stamp duty under item 66(c) read together with item 32(a), First Schedule of Act 378 shall not be imposed to the plaintiff. The plaintiff is only subject to pay a fixed stamp duty of RM10 (under item 32(i), First Schedule of Act 378). The reasons are:

32.1 The other beneficiaries (all 5 of the deceased children) of the estate of the deceased renounced all their rights, interests and entitlements to the Land (5/6 share) pursuant to the Deed of Settlement & Renunciation of Inheritance.

32.2 The other beneficiaries cannot be forced to take or accept the inheritance to the Land (5/6 share).

32.3 By operation of law, the rights, interests and entitlements to the Land (5/6 share) would by operation of law flow to the remaining beneficiary *ie*, the Plaintiff (dceased's wife), whereby she shall be the sole beneficiary of the Land.

32.4 At the time of the renunciation by the beneficiaries, the administration and distribution of the deceased had not been completed.

32.5 Therefore, the other beneficiaries did not have any beneficial and legal interest and/or possess any rights to the Land (5/6 share).

32.6 For the gift *inter vivos* to take place, the giver must have had possession of the right to the property that was intended to be given away.

32.7 As such, since the other beneficiaries renounced their rights, interests and entitlements to the Land (5/6 share), they did not and could not have any right or title to make/grant a gift to the Plaintiff.

[22] Based on the facts of the plaintiff's case, learned counsel for the plaintiff submits that the true nature of Form 14A was solely to give effect to the renunciation of the children (the other beneficiaries) of the estate of the deceased father (Yong An Yee @ Yong See Teck).

The Defendant's Submission

[23] The defendant submits that the duty assessment is correct based on the law and facts. There is no error in imposing the stamp duty *ad valorem* to the plaintiff. The plaintiff should not be refunded for the stamp duty paid in full.

The defendant prays that this appeal be disallowed with costs.

[24] Learned Senior Revenue Counsel and Revenue Counsel had prepared the written submission explaining on the relevant provisions in Act 378 and the authority of cases as follows:

A

The Law: Stamp Act 1949 (Act 378)

Instruments Chargeable With Duty

(i) section 4(1) of the Act provides that:

> Subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of this Act, be chargeable with the several duties specified in such Schedule.

B

(ii) item 66 of First Schedule of the Act provides that:

C

Instruments chargeable with stamp duty

Item	Description of Instrument	Proper Stamp Duty
66	Release Or Renunciation that is to say, any instrument whereby a person releases any property:	
	(a) If on sale	The same duty as a conveyance on sale
	(b) If by way of security	The same duty as a charge or mortgage
	(c) If by way of gift	The same duty as a conveyance by way of gift
	(d) If any other case not otherwise specially charged with duty	RM10.00

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(iii) item 46 of First Schedule of the Act provides that:

Item	Description of Instrument	Proper Stamp Duty
46	GIFT	See Subsection 16(1)

G

(iv) subsection 16(1) of the Act provides that:

> Voluntary conveyance *inter vivos* 16(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale.

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(v) item 32 of First Schedule of the Act provides that:

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Item	Description of Instrument	Proper Stamp Duty
32	Conveyance, Assignment, Transfer Or Absolute Bill Of Sale:	
	(a) On sale of any property (except stock, interest, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c))	For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater: (i) RM1.00 on the first RM100,000; (ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000; (iii) RM3.00 on any amount in excess of RM500,000. (iv) RM4.00 on any amount in excess of RM1,000,000.
	(h) Of any property by way of gift (whether by way of voluntary disposition or otherwise)	See Gift and subsection 16(1)
	(i) Of any kind not otherwise specially charged with duty	RM10.00

[25] In applying the provisions of Act 378, learned counsel for the defendant submit that the plaintiff had become the sole beneficiary after the five children had renounced their respective rights under the will to inherit each of their shares (5/6 shares) towards the land by way of the execution of the deed of settlement and renunciation of inheritance dated 27 March 2023 to the plaintiff (their mother) to administer the estate of the deceased and to vest all the shares.

[26] The vesting order giving effect to distribute and vest all the shares assets according to the deed of settlement and renunciation of inheritance was granted by the Shah Alam High Court on 30 May 2023.

[27] The plaintiff then filed the form for the memorandum of transfer (Form 14A) as the administratrix to vest all shares in the land to herself as the proprietor according to the vesting order on 22 June 2023.

[28] For stamping, the plaintiff had submitted Form 14A to the defendant for adjudication on 23 June 2023 through STAMPS portal, and then the defendant issued notices of assessment dated 13 July 2023.

[29] The computation for the notice of assessment issued by the defendant is as follows:

Property	Fixed Stamp Duty (RM) (1/6 share)	*Ad Valorem* Stamp Duty (RM) (5/6 share)	Total Amount (RM)
Geran Mukim No. 3644, No. Lot 577, Mukim Serendah, Daerah Hulu Selangor	10.00	20,800.00	20,810.00

[30] Learned counsel for the defendant maintain that the computation and assessment of the stamp duty for the transfer of the land is charged with fixed stamp duty amounting to RM10 when the transfer of the deceased's property is distributed to the plaintiff as entitled beneficiary as listed in the last will dated 25 April 2008 without any refusal of the right from any beneficiaries.

[31] Here, in the plaintiff's case, learned counsel for the defendant submit that in the situation when the five children's refusal or renunciation of the right of interest towards the land received, the calculation of stamp duty and the apportionment of the property which is refused by the beneficiary shall be assessed and imposed *ad valorem* stamp duty towards the apportionment of the right of the interest (refer to the deed of settlement and renunciation of inheritance). The plaintiff agreed to receive a portion of the shares of each of the children.

[32] The defendant strongly avers that the amount of stamp duty that should be assessed and imposed *ad valorem* duty on the memorandum of transfer (Form 14A) from the 5/6 portion and assessed was made according to item 66(c), First Schedule of the Stamp Act 1949.

[33] These transfers are considered to operate as a voluntary *inter vivos* disposal according to s. 16(1) of the Act 378 between the beneficiaries subjected to item 66(c), First Schedule of the Stamp Act 1949.

[34] Learned counsel for the defendant submit that the act of the children by renouncing to give their rights/shares in the land specifically in favour of the plaintiff constitutes a gift by them to the plaintiff.

[35] Based on the facts of the current appeal, learned counsel for the defendant submit that the children hold an interest over 5/6 shares of the land as the children are initially entitled to the deceased's estate according to the will. However, the children renounced their rights, benefits, and interests and gave them to their mother/plaintiff *via* the deed of settlement and renunciation of inheritance. The moment the children renounced their rights, benefits, and interests over the 5/6 shares of the land to their mother, they did not renounce their legal rights because they did not hold legal title to it, but did renounce their beneficial interest over the property since they are entitled to it under deceased's last will.

[36] Learned counsel for the defendant refers to *Black's Law Dictionary*:

> beneficial interest as a right or expectancy in something (such as a trust or an estate), as opposed to legal title. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property.

With that, learned counsel for the defendant further submits that if the children did not hold beneficial interest, they should not enter into the deed of settlement and renunciation of inheritance to renounce or give their portion over the 5/6 of the land to the mother/plaintiff.

[37] Learned counsel for the defendant cited the case of *Commissioner Of Stamp Duties (Queensland) v. Livingston* [1964] 3 All ER 692, where the Privy Council held that the deceased's wife failed to get any beneficial interest in any particular property comprised in her husband's residuary estate as her husband's residuary estate was still unadministered at her death.

[38] However, in this case before this court, the deceased's property has already been administered in this case. As such, all the beneficiaries *ie*, the plaintiff/mother and the five children, already have the beneficial interest in the deceased's property. Therefore, the deed of settlement and renunciation of inheritance was made with the intention to renounce the children's beneficial interests in the land and give it to the plaintiff/their mother. Therefore, this renunciation is a distribution of the deceased's estate by the children who were beneficiaries before by giving it to the mother (plaintiff) as the sole beneficiary based on the deed of settlement and renunciation of inheritance.

[39] Learned counsel for the defendant submit that Act 378 does not define the words "renunciation" and "release". So, reference is made to the ordinary dictionary meaning:

(i) *Black's Law Dictionary*:

> "renunciation":
>
> 2. Wills and estates. The act of waiving a right under a will. At one time, one renounced an inheritance by intestacy and disclaimed a gift by Will. Today disclaim is common in both situations.

A "release":

2. The relinquishment or concession of a right, title, or claim.

(ii) The *Shorter Oxford English Dictionary*:

"renunciation" means action of renouncing, giving up or surrendering
B (a possession, right, title, *etc*).

The ordinary meaning of these words, the renunciation by the children specifically in favour of the plaintiff is an indirect disposal/transfer of the property by way of a gift as envisaged in item 66(c) of First Schedule of the Stamp Act.

C

[40] Learned counsel for the defendant refers to *Words, Phrases & Maxims, Legally & Judicially* defines:

A gift is a voluntary conveyance; that is, a conveyance not founded on consideration of money or money's worth. Gift is the transfer of certain existing moveable or immovable property made voluntarily and without
D consideration, by one person, called the donor, to another, called the done and accepted by or on behalf of the donee.

Act IV of 1882 (Transfer of Property) s. 122. A gift is the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person without any consideration. Gifts are of
E two kinds: (1) gifts *inter vivos*; and (2) gifts *causa mortis*.

And *Black's Law Dictionary* defines an *inter vivos* gift as a gift of a personal property made during the donor's lifetime and delivered to the donee with the intention of irrevocably surrendering control over the property.

F **[41]** Learned counsel for the defendant submit that the facts of this case indicate that the children had renounced their rights/interests and benefits of shares in the land specifically in favour of the plaintiff/their mother constitutes a gift to the plaintiff/their mother.

This is because it confers a benefit to the plaintiff (mother) and grants the
G plaintiff an interest, which she did not previously possess. Therefore, the renunciation was a conveyance or transfer by the said beneficiaries operating as a voluntary disposition *inter vivos* under s. 16 of Act 378, which is subject to *ad valorem* duty.

Further, based on the above definition and current appeal, it is an apparent
H gift when there is the deed of settlement and renunciation of inheritance by the children that shows their sole intention is to give all their 5/6 shares of the land to the plaintiff/their mother.

Hence, learned counsel for the defendant submit that, for all intents and purposes, they had effectively made a gift to the plaintiff of their interest in
I the property.

[42] Based on the definitions, learned counsel for the defendant submit that the application of item 66(c) of First Schedule leads to item 46 of First Schedule and sub-s. 16(1) of the Act 378 is a valid imposition to the plaintiff. A

[43] Learned counsels for the defendant cited:

(i) the case of *Sabah Berjaya Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri* [1999] 3 CLJ 587, where the court held, "Since consideration in the eyes of equity is either money or money's worth, it follows that a transaction under which property is transferred without valuable consideration is a gift." B

(ii) Gill J's decision in *Kwan Teck Meng & Ors v. Liew Sam Lee* [1962] CLJU 73; [1962] 1 LNS 73; [1963] 1 MLJ 333, a case which, among other things, relates to a transfer from a father to his sons. The court held, "However, all the transferee have given evidence to say that in fact they paid no money and that the transfer was a gift. I am satisfied on that evidence, and I find as a fact, that this transfer was in consideration of love and affection and was therefore by way of a gift". C D

[44] Learned counsel for the defendant refer to para. (b) of the deed of settlement and renunciation of inheritance, "The renouncing beneficiaries who are issues of the deceased and beneficiaries of the estate now desirous to renounce their entitlement and rights of inheritance to the property known as GM3644, Lot 577, Mukim Serendah, Daerah Hulu Selangor, Negeri Selangor ("the property") under the estate, to TYC in consideration of love and affection." E

Even though the term 'gift' is not used anywhere in the deed of settlement and renunciation of inheritance, learned counsels for the defendant submit that by virtue of the authorities mentioned above, the term 'gift' need not be expressly stated. F

[45] Further, learned counsel for the defendant stated that by virtue of the beneficiaries (the five children) having renounced their rights in the estate in favour of the plaintiff based on mutual agreement *via* the deed of settlement and renunciation of inheritance, such circumstances manifest a consideration of natural love and affection between the plaintiff and her children. It must be noted that no monetary consideration was given. G

[46] The cases cited by learned counsel for the defendant: H

(i) in *Re Tan Soh Sim, Deceased; Chan Lam Keong & Ors v. Tan Saw Keow And & Ors* [1951] CLJU 77; [1951] 1 LNS 77; [1951] 1 MLJ 21, the High Court held that the court had to determine whether the disputed instrument was a unilateral undertaking to renounce by way of gift. Briggs J held: I

> In the case of parent and child there is, no doubt, a strong presumption that love and affection exist.

(ii) it is common that a transfer of property could be done by way of a gift on account of love and natural affection. In *Queck Poh Guan v. Quick Awang* [1998] CLJU 159; [1998] 1 LNS 159; [1998] 6 MLJ 388, Idris J held that "It is my finding of fact that the transfer of the 1/3 portion in the land was a gift from the mother to the defendant on account of natural love and affection".

(iii) in the case of *Nolan v. Nolan And Another* [2003] VSC 121, Dodds-Streeton J held that – "(4) The essential elements of a valid gift *inter vivos*, in the absence of a deed of gift or a declaration of trust were: (a) an intention to make a gift, (b) intention on the part of the donee to accept the gift, and (c) delivery. The documents on which the plaintiff relied contained statements which, even if admissible, did not amount to words of present gift by Nolan to CN. (5) there was no requirement that donative intention was to be manifested by words of gift. Although donative intention would normally be manifested, and its extent defined, by words, unusual circumstances could be imagined where other means fulfilled those functions. The putative donee seeking to rely on alternative means of establishing donative intention, bore the onus of proving the existence of a present, unequivocal donative intention, attended by the requisite certainty as to object, extent, and whether the gift would take immediate effect".

Form 14A

[47] As regards to the adjudication and assessment of stamp duty, the defendant had assessed that Form 14A being instrument chargeable with stamp duty as stipulated under s. 4 of Act 378.

[48] Generally, Form 14A is chargeable with stamp duty under item 32 of First Schedule of the Act 378. However, in this case before this court, Form 14A not only involves a transfer from the administrator to a beneficiary (plaintiff/mother) but also relates to a release or renunciation by the children to the plaintiff/mother who were the beneficiaries under their father's Last will even before the execution of the deed of settlement and renunciation of inheritance.

Therefore, sub-s. 16(1) comes in and the conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale.

[49] In computing the assessment of the stamp duty, the defendant had taken into account:

(i) the mother (plaintiff) is lawfully entitled to a 1/6 share of the land transferred *via* Form 14A by the administrator to the mother/beneficiary/plaintiff. On the application of s. 4 of the Act 378, this transfer falls under item 32 of First Schedule *ie*, transfer of any kind not

otherwise specially charged with duty. Accordingly, the duty chargeable on Forms 14A for the 1/6 share is RM10 each and under item 32(i), as this part of the transfer does not fall under the circumstances outlined in items 32(a), (b), (c), (d), (e), (f), (g) or (h).

(ii) the release or renunciation of by the five children to their mother (plaintiff) is a release or renunciation by way of gift through Form 14A, which falls under item 66(c) of First Schedule of the Act 378. Reference to "gift" is provided under item 46 of the First Schedule, which directs the application of s. 16(1) of the Act 378, where the transfer operates as a voluntary disposition *inter vivos* and shall be chargeable to stamp duty as if it were a transfer on sale.

Pursuant to this, the defendant had assessed and charged *ad valorem* duty in accordance with item 32(a) of First Schedule of the Stamp Act on the transfer of 5/6 shares of the land to the plaintiff in the sum of RM20,810.

[50] Learned counsel for the defendant rely on the decision by the Shah Alam High Court in the case of *Lai Siew Yoong v. Pemungut Duti Setem* ([2020] CLJU 1407; [2020] 1 LNS 1407), where the MTSA held that:

> 11. However, in this instance, the beneficiaries surrendered their entitlement by filing an affidavit expressing their consent for the assets of the deceased to be transferred solely to the Plaintiff. The relevant portion of the affidavit states that "kami telah bersetuju untuk memindahmilik kesemua hartanah-hartanah yang tersebut di atas kepada Benefisiari Lai Siew Yoong.
>
> 12. The Stamp Act 1949 [Act 378] provides for the charging of stamp duty as follows, …
>
> 13. Item 66 of the First Schedule of Act 378 is relevant to the factual matrix here …
>
> 14. By consenting to the transfer of their ¾ entitlement to the said properties to the Plaintiff, the other beneficiaries have effectively renounced their entitlement, and at the same time released their rights on the said properties. The release and renunciation to the properties constituted a gift to the Plaintiff.
>
> 15. As the Form 14A was executed to give effect to the intention of the beneficiaries, the instrument is therefore chargeable with stamp duty as a conveyance by way of gift.
>
> 16. Reference is then made to Item 32 of the First Schedule.
>
> 17. …
>
> 18. Subsection 16(1) provides …

A

19. Reading all the above provisions, what is clear is that under Act 378, gift and voluntary conveyance *inter vivos* bears the same meaning. Pursuant to the provisions of subsection 16(1) therefore, *ad valorem* stamp duty is chargeable on such voluntary conveyance or transfer of property by way of gift.

B

20. To then determine the amount of stamp duty chargeable, reference is made again to Item 32, in particular paragraph (a) which provides that the stamp duty chargeable is that of the sale of any property.

[51] Learned counsel for the defendant rely on the decision by other High Courts, namely:

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(i) Penang High Court in *Hor Lim Chee v. Pemungut Duti Setem* (Saman Pemula No. 24NCvC-1347-12-2013) which affirmed the assessment of *ad valorem* duty by the Collector under item 66(c) of First Schedule of the Stamp Act on Form 14A effecting a transfer involving a renunciation by several beneficiaries to a single beneficiary.

D

(ii) Muar High Court in *Chua Wee Hee v. Pemungut Duti Setem & Anor* (Mahkamah Tinggi Muar: Rayuan No. JB-16A-1-04-2018), where the court held that:

> 26. Berdasarkan fakta-fakta dalam kes ini, Mahkamah berpendapat bahawa taksiran terhadap Borang-Borang 14A oleh Responden adalah betul di mana ia terbahagi kepada dua bahagian seperti berikut:
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> E
>
> (a) 1/3 bahagian daripada Hartanah tersebut yang dipindahmilik daripada Pentadbir kepada Perayu sebagai benefisiari melalui Borang 14A berdasarkan subsekyen 6 (1)(e), duti setem nominal yang telah dikenakan sebanyak RM10.00 bertepatan dengan Item 32 Jadual Pertama Akta atau secara spesifiknya, Item 32(i) yang memperuntukkan "transfer of any kind not specially charged with duty". Pada pendapat Mahkamah, pindahmilik di atas tidak terjatuh di bawah mana-mana Item 32(a), (b), (c), (d), (e), (f), (g) ataupun (h). Oleh itu, duti nominal sebanyak RM10.00 dikenakan.
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> (b) Bagi pindahmilik yang melibatkan 2/3 bahagian lagi, ia merupakan pindahmilik daripada Pentadbir kepada Perayu hasil daripada pelepasan dan penolakan hak benefisiari-benefisiari lain kepada Perayu berdasarkan dokumen persetujuan yang diikrarkan pada 18.05.2017 dan Perintah Mahkamah Tinggi bertarikh 25.07.2017. Pada pendapat Mahkamah, oleh kerana terdapat pelepasan dan penolakan hak daripada benefisiari-benefisiari lain melalui dokumen-dokumen persetujuan maka Item 66 Jadual Pertama Akta Setem 1949 adalah terpakai. Dengan pelepasan dan penolakan hak kepada Perayu tanpa sebarang balasan maka Borang-Borang 14A tersebut hendaklah dikenakan duti setem di bawah Item 66(c) iaitu sama seperti duti
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> I

yang dikenakan kepada pindahmilik secara pemberian/hadiah yang terkandung di bawah Item 46 yang merujuk kepada subseksyen 16(1) di mana memperuntukkan bahawa bagi pindahmilik secara sukarela (transfer operates as a voluntary disposition *inter vivos*) hendaklah dikenakan duti sebagaimana duti pindahmilik berdasarkan jualan. Dengan demikian, Borang-Borang 14A bagi pindahmilik 2/3 bahagian tersebut hendaklah dikenakan duti *ad valorem* selaras dengan Item 32(a) Jadual Pertama Akta.

Evaluation And Findings

[52] This court appreciates all the written submissions by learned counsel for the plaintiff and the defendant.

[53] The intention of Act 378 cannot be changed nor manipulated by anybody to exit from paying the stamp duty under the only Act *ie*, the Stamp Act 1949 (Act 378). This Act has come into force on 5 December 1949. Under sub-s. 4(4) of Act 378, the duties imposed by such Schedule may be cancelled, varied or added to by a resolution of the House of Representatives.

[54] Here, before me, even though the plaintiff has paid all the stamp duty imposed upon her by the defendant (Pemungut Duti Setem), the plaintiff has objected and is dissatisfied that she has to pay *ad valorem* duty in the sum of RM20,800.

[55] The question for me to decide is whether the defendant (Pemungut Duti Setem) had misinterpreted the relevant principles and provisions of the law (Act 378 and the authority of cases) and the defendant is erroneously imposed *ad valorem* duty on the Form 14A. If the court is in favour of the plaintiff, the plaintiff seeks this court to order the defendant to refund to the plaintiff the excess stamp duty paid by the plaintiff to the defendant *ie*, RM20,800. For the stamp duty of RM10, the plaintiff avers that it is correctly imposed.

[56] The imposition of *ad valorem* duty (Latin words means "According to the value". Duties which are graduated according to the value of the subject matter taxed) (this court refers to *Osborn's Concise Law Dictionary*) by the authority that is Lembaga Hasil Dalam Negeri Malaysia is not to be interpreted as excess stamp duty. The submissions by learned counsel from LHDN have stipulated that the imposition is according to the law.

[57] When the late Yong An Yee @ Yong See Teck died testate with his last will and testament dated 25 April 2008, he has distributed the land to his surviving wife and five children with the proportion as per the will. He did not leave all the land to his wife/the plaintiff *ie*, the mother of his five children.

[58] In the deed of settlement and renunciation of inheritance dated 27 March 2023 (*ie*, 15 years after Yong An Yee @ Yong See Teck's last will and testament), the five children agreed to renounce and/or release all their rights, entitlements, and interests to the land to their mother (plaintiff).

[59] Two months after the deed of settlement and renunciation of inheritance, the Kuala Lumpur High Court had issued the vesting order (to vest all the shares of the land to the plaintiff). With that, the plaintiff is granted to execute Form 14A to effect the vesting of the title of the land.

[60] In order to execute the instrument of Form 14A, Act 378 provides the types of instruments chargeable with stamp duty (the description of instruments and proper stamp duty are stipulated in the First Schedule).

[61] In the midst of writing this grounds of judgment, the Court of Appeal's grounds of judgment in the case of *Pemungut Duti Setem Malaysia v. Perbadanan Pembangunan Pulau Pinang* [2024] CLJU 982; [2024] 1 LNS 982 dated 16 May 2024 was uploaded in the eJudgment and the principles of law in that case stated as follows:

> [18] The governing principle is that stamp duty strikes at instruments rather than transactions. This is entrenched in section 4(1) Stamp Act 1949 which provides that:
>
> > 4(1) Subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of this Act, be chargeable with several duties specified in such Schedule.
>
> [19] The above principle is established by the decision of the court in *Lim Teck Lee v. Commissioner of Stamps* [1956] 1 MLJ 135, where the Court of Appeal held:
>
> > The fundamental principle is this. The Stamp Act taxes instruments, not transactions. If there are two ways of carrying out a transaction and the parties are content with the simpler, they are entitled to carry it out in that way.
>
> [20] In *Galaxy Energy Technologies Sdn Bhd v. Timbalan Pemungut Duti Setem, Malaysia & Anor* [2011] 5 CLJ 829, this Court held a similar view:
>
> > [19] The cardinal principle of stamp duty is that stamp duty is chargeable on the instrument and not transactions. As Finley J in *Prudential Assurance Co v. Inland Revenue Commissioners* [1935] 1 KB 101 said:
> >
> > > The rule which must not be forgotten – namely, that under the Stamp Act one stamps, not transactions or anything of that sort, but one stamps instrument.
>
> [21] In the case of *BASF Services (M) Sdn Bhd v. Pemungut Duti Setem* [2010] 4 MLJ 596, the Federal Court held that:

[18] Now that this court has identified the transfer form as the instrument that is chargeable to stamp duty, the next step is to decide on whether the infrastructure fees are part of the consideration of the agreement and hence liable under item 32(a). A

It is generally acknowledged that the real substance of a transaction may not successfully be appreciated by mere perusal of a document, or by a hurried gauging of the machinery adapted by the parties of the transaction. Only after going through the exercise of construing the [2010] 4 MLJ 596 at 605 document as a whole may the real substance of that transaction be known and thenceforth ascertain the respective parties' rights and obligations, and the correctness of the respondent's adjudication … B C

CC Gallagher Highmore's Stamp Laws (4th Ed) at p 7 authored:

> General Rules as to Stamp Duties.
>
> In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial … For instance, if a writing were headed by a recital that the parties had agreed to execute the promissory note thereinafter written, yet if in truth the contract set forthwas not a promissory note, but an agreement of another character, the stamp duty would be not that of a promissory note, but of the agreement. The question therefore, stamp or no stamp, and if a stamp to what amount, is to be determined upon the real and true character and meaning of the writing. It is sufficient to refer to the case of *Rex v. Inhabitants of Ridgwell* [1827] 6 B & C 665, to establish this proposition. D E F

[19] In *Stanway Limited v. Collector of Stamp Duties, Ipoh* [1931-32] FMSLR 239, Throne Ag CJ said:

> Now I would here remark that under the provisions of the Stamp Enactment the parties to an instrument become liable to pay duty upon the instrument made between them, having regard to the effect of the instrument, and they cannot avoid payment of the proper duty by using a form of instrument to carry into effect the transaction which, though in name falls within one category, by its effect into another. G H

[20] In *Tan Kay Thye & Ors v. Commissioner of Stamp Duties* [1991] 3 MLJ 150, likewise echoed the sentiments of CC Gallagher's Highmore's Stamp Laws when the case of *Limmer Asphalte Paving Company Limited v. Commissioners of Inland Revenue* (1872) LR 7 Exch 211 was quoted by the court to establish the point that what parties called a document was not important. In the current appeal, the I

A fact that the agreement carries the title 'Purchase, Sale, Development and Infrastructure Agreement' and implying three possible separate agreements, is not decisive. It is the effect and substance of the agreement that counts …

[22] From the above cases, for the court to determine whether the B stamp duty levied on an instrument is correctly imposed by the Collector, the following matters must be taken into account before the court could come to a finding:

(i) the name, title, label or description given to the instrument/document (label) by the parties in question is not conclusive. The court is not bound by the label and may go behind the label C to determine the true nature of the instrument/document;

(ii) the court has to construe the instrument/document as a whole;

(iii) in addition to the instrument/document, the court may consider all relevant documents (relevant documents) so as to ascertain the true nature of the instrument/document; D

(iv) in deciding the true nature of the instrument/document, the court may consider all relevant circumstances regarding the instrument/document (relevant circumstances); and

(v) in considering the instrument/document, relevant documents E and relevant circumstances, the court determines the following matters:

(a) what is the true nature of the rights and obligations of the parties?

(b) what is the effect of the instrument/document, relevant F documents and relevant circumstances? and

(c) what is the substance of the instrument/document?

[62] In applying the case of *Pemungut Duti Setem Malaysia v. Perbadanan Pembangunan Pulau Pinang* (*supra*) and after scrutinising the facts, this court G is agreed that the *ad valorem* duty imposed by the defendant to the plaintiff is correctly made, because:

(i) the plaintiff, who is also the administrator and one of the beneficiaries, did not transfer the estate of her late husband according to the will. The defendant (Collector) would impose an *ad valorem* duty under item 66 of H First Schedule of the Act 378.

(ii) the deed of settlement and renunciation of inheritance is not just an approval instrument that passed the rights/interests/entitlements of the five children to their mother (plaintiff) and to skip the payment of the stamp duty to be levied under the Act 378.

I

(iii) the deed of settlement and renunciation of inheritance as the instrument used to release the children's entitlement and rights to the property to the mother/plaintiff, this instrument has been charged with a nominal duty of RM10 as it has no legal effect of transferring the property to the mother/plaintiff. However, Form 14A, the instrument that executed the transfer, is charged with *ad valorem* duty as it has the legal effect of transferring the title to the plaintiff (mother).

(iv) a specific item in Act 378 caters to the renunciation, *ie*, item 66 of First Schedule, the transfer of 5/6 of the property to the mother/plaintiff must be charged according to item 66(c) of First Schedule of the Act 378.

(v) Form 14A is a document/an instrument that is able to transfer title, therefore, the adjudication of stamp duty must be referred to item 32(i) and 66(c), First Schedule of the Act 378.

Conclusion

[63] In view of the foregoing, it is my judgment that having evaluated the evidence, this court dismissed the plaintiff's application in the OS with costs. The *ad valorem* duty charged is correct in law and fact, and the defendant/Collector was right in dismissing the plaintiff's objection as regards the duty charged.

[64] It is my finding that the assessment of the defendant/Collector is not erroneous, therefore, there is no question of any excess of duty. This court decides that RM20,800 should not be refunded to the plaintiff.